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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92055585
Party	Defendant Drew Massey dba myUndies Inc.
Correspondence Address	DREW MASSEY DBA MYUNDIES INC 3387 XANTHIA STREET DENVER, CO 80238 UNITED STATES massey@masseyventures.com
Submission	Motion to Dismiss - Rule 12(b)
Filer's Name	DREW MASSEY
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Date	05/09/2012
Attachments	myUNDIES Trademark Request for DISMISSAL.pdf (7 pages)(2419017 bytes)

REGISTRANT REQUESTS AN IMMEDIATE DISMISSAL OF THE PETITIONER'S CANCELLATION PROCEEDINGS POST HASTE.

PETITIONER HAS FAILED TO MAKE A VALID CLAIM AS THE REGISTERED MARK IS NOT ABANDONED AND IS USED EXACTLY AS REGISTERED. AND PETITIONER'S CANCELLATION REQUEST IS BASED ON FRAUD.

PETITIONER HAS ATTEMPTED TO STEAL A LEGAL TRADEMARK BY CHANGING ONE LETTER OF THE REGISTERED MARK AND HAS FAILED TO GET APPROVAL FOR THE INFRINGING COPYCAT TRADEMARK.

PETITIONER IS CAUSING HARM TO LEGALLY OWNED REGISTRANT BY THE CONTINUED USE OF SIMILAR MARK AND IS NOW CAUSING FURTHER HARM TO REGISTRANT BY MAKING FALSE ALLEGATIONS AND CAUSING DURESS ON REGISTRANT BY FILING A FRAUDULENT CANCELLATION PETITION.

THE USPTO BOARD SHOULD NOT ALLOW THE CONTINUED UNETHICAL LEGAL ACTIVITY BY THE PETITIONER'S COUNSEL AND SHOULD REJECT AND DISMISS THE CANCELLATION AGREEMENT IMMEDIATELY AND NOT SUBJECT THE REGISTRANT TO 15 MONTHS OF EXTRAORDINARY PROCEEDINGS AND COSTS.

SPECIFIC DENIALS TO THE PETITIONER'S CLAIMED GROUNDS FOLLOW...

Petitioner Claimed Grounds for Cancellation:

1. Petitioner claims case law *Torresella S.r.l.* Fraud 808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
2. Petitioner Claims Abandonment

3. Petitioner Claims “desirious” use of the nearly identical mark MEUNDIES in connection with identical classification of apparel retail.
4. Petitioner Claims Registrant has never used in commerce or discontinued use of the mark MYUNDIES...thus abandoning and rendering cancellable.
5. Petitioner Claims legal use of non-registered mark MEUNDIES will be impaired by continuance of legally held mark MYUNDIES.

REGISTRANT RESPONSE

1. DENY. Registrant legally obtained trademark MYUNDIES. Torresella is based on the re-registration of a mark that was changed both in name and in image/logo. Neither has taken place with MYUNDIES. The name and the text-based mark are both the same. No fraudulent statements or actions have taken place in the legally acquired registration of MYUNDIES. Additionally, the registered mark has been used explicitly as registered further negating any claims to fraud.

Furthermore, the petitioner is making blatantly fraudulent claims by attempting to register a nearly identical mark (only one letter difference in their name MEUNDIES) as the mark owned by the registrant for *an identical business*. All of which was known prior to their attempted registration of the mark. The mark MYUNDIES was LIVE 3 YEARS BEFORE the petitioner even started their business. The petitioner is fraudulently attempting to steal both a registered tradename and business as that of the registrant.

2. & 4. DENY. Both grounds claim abandonment which is not true. The registrant is using the live registered mark. The registrant has spent significant capital to develop a business based on the mark and has developed, sourced and produced product for commerce. The registrant continues to invest and build a business around the registered live mark. The company has commercial product

and is developing additional electronic storefronts to further expand the use of the registered live mark. See Exhibits below.

3. DENY. Being desirous of, and requesting legal approval of, a name that is infringing on another registered live trademark is a claim without merit. Attempting to steal a mark by merely changing one letter and then claiming that as grounds for cancellation of another legal and live mark is meritless, not to mention blatant theft . Any attempt by the board to approve the cancellation of a mark based on such a frivolous claim would set a precedent for a wave of attempts to cancel every major brand trademark in the world. A college kid can claim he is desirous of making a global social network under the name "*Famebook*" and then claim Facebook is infringing on his rights. Or may want a hamburger chain named "*McDonolds*" and claim McDonald's is infringing on his rights. Merely desiring something is not grounds for a legal claim to someone else's legal trademark, goodwill and assets. Desirous as a "grounds for claim" is, quite frankly, delirious.

5. DENY. Again, similar to the desirous claim, the claim by a petitioner who is attempting to copycat and steal a registered mark that it, as the infringer, is being harmed by the continued use of the legal trademark by the legal holder, is not a valid legal argument. Any attempt by the board to approve a cancellation of a legal mark based on such a frivolous claim would set a precedent for a wave of attempts to cancel every major brand trademark in the world. An infringer will setup an infringing copycat business and then state that the legal registrant is harming said infringer. Again, the legal argument is baseless, nonsensical (grasping at straws), and clearly fraudulent.

BASED ON THESE FACTS, THE REGISTRANT AGAIN REQUESTS IMMEDIATE DISMISSAL OF THE PETITIONER'S CANCELLATION PROCEEDINGS POST HASTE. PLEASE DO NOT LET BASELESS CLAIMS WASTE THE RESOURCES OF THE USPTO AND LAW ABIDING LEGAL TRADEMARK OWNERS.

EXHIBITS



myUNDIES

LIVE TRADEMARK

PROTECTED & IN USE

myUNDIES Retail Product



myUNDIES Manufactured Sourcing


Samples Produced



myUNDIES Store/App/Marketing

myUNDIES
changing the world

myUNDIES Catalog | Boxer Shorts | Log In | Customer Service | My Cart




VIP Newsletter
New Product Launches, Parties,
Events, & More...

Buy Undies



Pic of the week



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